IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2491 OF 2005

Shri Anil Chintaman Mahajan : Petitioner

V/s.

Smt.Nirupama A. Mahajan : Respondent

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Mr.A.A. Joshi for Mr.Vineet Shrivastava for the petitioner.

Mrs.V.D.Deshmukh for the respondent.

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CORAM : S.A. BOBDE, J.

September 15, 2005.

P.C.:

1. Though mediation was suggested, the matter cannot be mediated upon due to bitter acrimony between the parties.

2. Rule, returnable forthwith.

Mr.Deshmukh waives service of rule on behalf of the respondent.

Heard by consent.

3. The petitioner-husband has challenged the order of interim maintenance granted by the Civil Judge, Senior Division, Thane, directing the petitioner to pay a sum of

Rs.7000/- per month towards interim maintenance and Rs.10,000/- towards legal expenses to the respondent.

4. At the outset, the learned counsel for the petitioner fairly stated that the petitioner is not challenging the quantum of maintenance but is challenging the order on the ground that the respondent is not entitled to any maintenance at all. It appears that the petitioner has sued the respondent for divorce on the ground of cruelty. The petitioner is a Chartered Accountant and so is the respondent. Before their separation, they were carrying on business through a partnership firm.

5. It appears that several untoward incidents took place between them. The incident relied upon by the trial Court appears to be an incident of 24.4.2004, vide para 2 of the order of the trial Court, when the petitioner is said to have beaten the respondent in their office in the presence of a client. The learned trial Judge has observed that thereafter the respondent has been without an office and cannot carry on her practice from her parents' house. The learned trial Judge has observed that the petitioner has retained the files. As regards the income, the learned trial Judge has relied on the income-tax return for the year 2003-04 under which her income was Rs.1,73,000/-. Admittedly, Mr.Joshi, the learned counsel for the

petitioner, submitted that a perusal of the income-tax return shows that she has been carrying on business right upto the end of the financial year 2003-04. The learned counsel, in particular, relied on the T.D.S. certificate dated 30.4.2004 which shows that tax has been deducted from the respondent at source on 9.3.2004. According to the learned counsel, therefore, since the respondent has stated that she has left the house in August 2003, the T.D.S. certificate which shows the receipt of payment on 9.3.2004 belies her aforesaid statement. I am not inclined to accept this argument. The respondent may have left the house in August 2003 but may have continued to attend the office in order to discharge her professional responsibilities thereafter. The incident relied upon by the trial Court pertains to an apparent assault on the respondent on 24.4.2004. The T.D.S. certificate shows her income in March 2004. There is no evidence whatsoever to point out any income after 24.4.2004.

6. Mr.Joshi, the learned counsel for the petitioner further submitted that the petitioner has herself stated in her complaint to the police that she took away some files with police help on 13.1.2004 along with some of her belongings from the house. According to the learned counsel, therefore, the petitioner is in possession of her files and, therefore, the finding of the trial Court that

she cannot practice is not correct. This argument is also unacceptable since admittedly, there is nothing on record pointed out by the petitioner to show that the respondent is, in fact, carrying on her practice. Merely because the respondent is said to have taken away some files is not proof of the fact that she is earning an income from the parties to whom the files belong. In the circumstances, I find no error apparent from the order of the trial Court. The trial Court has prima facie found that the petitioner has an income of Rs.22,000/- per month and has directed him to pay a sum of Rs.7000/- per month towards interim maintenance and Rs.10,000/- towards legal expenses on the basis that the respondent has no source of income. I see no infirmity, jurisdictional or otherwise in the order.

7. Accordingly, the petition is dismissed. The rule stands discharged.

8. The Marriage Petition to proceed, in accordance with law. In the meanwhile, the direction given by this Court on 18.8.2005 that the petitioner shall not dispose of any immovable property over which the respondent has any claim shall operate for a period of one week from today during which time the respondent shall be at liberty to make an appropriate application to the trial Court. This application shall be decided on its own merits without

being influenced by any earlier order.

S.A. BOBDE, J.